

ESTTA Tracking number: **ESTTA258495**

Filing date: **01/03/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91186473
Party	Defendant Apex Pavers, Inc
Correspondence Address	Leslie A. Burgk Leslie A. Burgk, P.A. 900 East Ocean Blvd, Suite D-130 Stuart, FL 34994 UNITED STATES leslie@leslieburgk.com
Submission	Motion to Amend/Amended Answer or Counterclaim
Filer's Name	Leslie A. Burgk, Esq.
Filer's e-mail	leslie@leslieburgk.com
Signature	/LAB/
Date	01/03/2009
Attachments	Apex Pavers Motion to Amend.pdf ( 5 pages )(113566 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

APEX, LLC	)	
	)	Opposition No. 91186473
	)	
Opposer,	)	Mark: APEX PAVERS (and design)
v.	)	
	)	Serial No.: 77/243,433
APEX PAVERS INC.	)	
	)	Filing Date: July 31, 2007
Applicant.	)	
	)	

**APPLICANT'S MOTION TO AMEND APPLICATION**

Applicant, APEX PAVERS INC. (hereinafter the "Applicant"), by and through the undersigned counsel, hereby files Applicant's Motion to Amend Application, and in support thereof states as follows:

1. On July 31, 2007, the Applicant filed application serial no. 77/243,433 claiming a date of first use anywhere and a date of first use in commerce on June 1, 2006.
2. The Applicant filed its application without the assistance of legal counsel and unintentionally entered incorrect dates of first use that are very close in time to the actual dates of first use.
3. The correct date of first use anywhere is July 17, 2006 and the correct date of first use in commerce is September 12, 2006, as reflected in the Amendment attached hereto as Exhibit A.
4. Pursuant to TBMP § 212.07, if an amendment is filed in an application that is the subject of an opposition, the Board has jurisdiction over the application and determines the propriety of the amendment. The Board may grant a motion to amend an application in substance.

5. Pursuant to TMEP § 1505.02(d), if, in an application under §1(a), the applicant proposes to amend the dates of use to adopt a date of use that is later than the date originally stated, but before the application filing date, the Office will approve the amendment and will republish the mark to provide notice to parties who may have commenced use of a similar mark during the intervening period.

6. The Applicant does not believe the amendment will cause any prejudice to the Opposer and will not affect any issues involved in the proceeding as the Opposer is claiming a date of first use in 1924.

WHEREFORE, the Applicant respectfully requests that the Board grant the Applicant's Motion to Amend and forward the attached Amendment to the appropriate division for republication.

Dated: January 3, 2009

Respectfully Submitted,

LESLIE A. BURGK, P.A.

By: /LAB/  
Leslie A. Burgk  
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#### **CERTIFICATE OF ELECTRONIC FILING**

I HEREBY CERTIFY that the foregoing Answer and Affirmative Defenses is being submitted electronically through the Trademark Trial and Appeal Board's ESTTA System on this 3rd day of January 2009.

By: /LAB/  
Leslie A. Burgk

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the correspondent of record for the Opposer this 3rd day of January 2009 via First Class U.S. Postal Mail:

Mr. Andrew Gates  
Apex, LLC  
100 Main Street  
Pawtucket, Rhode Island 02860

By: /LAB/  
Leslie A. Burgk

## **EXHIBIT A**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 77/243,433  
MARK: APEX PAVERS  
APPLICANT: APEX PAVERS, INC.  
FILING DATE: JULY 31, 2007  
CORRESPONDENT ADDRESS: Leslie A. Burgk, P.A.  
900 East Ocean Blvd, Suite D-130  
Stuart, Florida 34994  
leslie@leslieburgk.com

AMENDMENT

In accordance with TBMP § 212.07 and TMEP § 1505.02(d), the Applicant respectfully requests to amend its above-referenced application as follows:

First Use Date Anywhere:

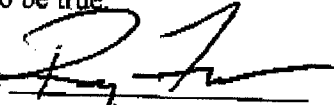
The date of first use anywhere is amended to read as follows:  
2006-07-17

First Use in Commerce Date:

The date of first use in commerce is amended to read as follows:  
2006-09-12

**Declaration**

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature:   
Signatory's Name: Ryan Figman  
Signatory's Position: President, Apex Pavers Inc.  
Date Signed: 1/2/09